IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 5840 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Madhusudan Vasudev Bhatt
VERSUS
Jhalod Borough Municipality & Otrs.

Appearance:

MR MC BHATT for the petitioner
MR HS MUNSHAW for Respondent No.1
MR MA BUKHARI for Respondent Nos.2 and 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : /07/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the parties.

2. It is understandable that peoples are making

encroachments on the roads, but, here it is a case where the Municipality is making an attempt to shorten the width of the existing public road by putting, on the part thereof, permanent construction of the shops. It is clearly an attempt on the part of the Municipality to make encroachment on the public road. The Municipality instead of discharging its duties to remove the encroachment on the public roads, has passed a resolution to construct shops on the public road and which cannot be permitted at least by the Courts. It is true that many larries, gallas and cabins are there on the public roads, footpath, Government or Municipality lands. The purpose of construction of the shops is to rehabilitate each of those larri, galla and cabinwalas. It is not gainsay that in case strict administration would have been there, there would not have been any possibility of larries, gallas or cabins on the public roads. If there is a willingness to be faithful towards duties by the officers and employees of the Municipality, there will not be any encroachment on the public road or Municipality or Government lands. The way in which encroachment on the public roads, Municipality or Government lands, are increasing, it gives out that it cannot be possible without the connivance of the officers of Municipality as well as office of the Police Department. Unless these persons have interest in continuation of the larries, gallas and cabins on the public road, the land of the Municipality or State Government, it is very very difficult for the person to make encroachment. The resolution which has been passed by the municipality in the present case for construction of the shops on the public road also creates suspicion in the mind of the Court. It is understandable that to rehabilitate those larri, galla and cabinwalas, some scheme may have been framed by the Municipality in a case, though it is difficult to appreciate the same in all the cases for obvious reason that first the officers and employees permits encroachment to be made by the persons and then, at the cost of the public, they frame scheme for rehabilitation. This scheme to be framed, how it can be permitted to be enforced by shortening the width of the existing public road.

3. The learned counsel for the respondent does not dispute the existence of this public road. He also does not dispute that for these larri, galla and cabinwalas, the construction of the shops is decided to be made on this public road. What he contends that bypass has been constructed and much traffic is not there on this public road. It is very difficult to accept because by increasing of the population of the country,

proportionately, the vehicle traffic is increasing everyday on the roads. It is not unknown that despite of having bypass in the cities or villages on the regular roads, the traffic pressure is not reduced. By construction of bypass, this road will still remain busy for local traffic. Only heavy vehicles may not be now permitted on the regular road.

4. Be that as it may, the learned counsel for the respondents has failed to show any provisions from the Municipalities Act where the Municipality is empowered and competent to reduce the width of the public road. Widening of the road is understandable, but shortening of the width of the road is nothing, but only an act to favour these larri, galla and cabinwalas for the reasons best known to the persons who are in-charge of the Municipality. If we go by the map produced on the record, it is proved that shops are to be constructed on the public road. By permanent construction on the road not only the width will be reduced, but it will create manifold traffic hazards and difficulties for the public. It is a right of the public to enjoy each inch of the width of the road and they cannot be deprived of the right in the manner in which what it is sought to be done by the Municipality.

5. The learned counsel for the respondents vehemently contended that at the instance of the petitioner, no relief may be granted by this Court in this matter. In his submission, the petitioner himself abutting to this road had made illegal construction of the shops though on his own land.

6. It is not the matter to be gone into at this stage, but suffice to say that in case the petitioner has put any illegal construction on his own land, it is open to the municipality to take appropriate action for demolition of the same in accordance with law. In case on this ground this petition is dismissed it will result in giving licence to the Municipality to put construction on the public road and this cannot be permitted by the Court. The municipality is the custodian of the roads and the land vested in it and by taking this resolution, it itself is attempting to grab the land for the larri, galla and cabinwalas. It is a case where to give or to extent some benefits to larri, galla and cabinwalas, this scheme has been framed, but this Court will not permit the same to be carried out as it is against the public interest. The Municipality has to remove all these larri, galla and cabinwalas from the roads rather than to favour, support and encourage the encroachments on public

roads. It has not only acted contrary to the law, but detrimental to the public interest.

7. In the result, this Special Civil Application succeeds and the same is allowed and the resolution dated 15th May, 1998 of the respondent-Municipality is quashed and set aside. Similarly, the approval of the plans and estimates made on 19th October, 1996 by the Public Works Committee as well as by the Executive Committee of the Municipality are declared illegal and the same are also quashed and set aside. The Municipality is hereby restrained from making any construction whatsoever on the road in dispute. So far as the existing encroachments on the road by the larri, galla and cabinwalas are concerned, it is hereby ordered that Municipality to take appropriate action in accordance with the law for the removal of the same. The respondent-Municipality is free to take appropriate action against the petitioner for removal of the alleged illegal construction of the shops made abutting to the public road, though in his own land. Rule is made absolute accordingly with no order as to costs.

(S.K. Keshote, J.)
(kamlesh)